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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

**RIN 0648-BG18**

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 43**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Gulf of Mexico (Gulf) Fishery Management Council (Gulf Council) has submitted Amendment 43 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) for review, approval, and implementation by NMFS. If approved by the Secretary of Commerce (Secretary), Amendment 43 would revise the hogfish fishery management unit (FMU) to be the West Florida stock and define the geographic range of this stock consistent with the South Atlantic Fishery Management Council's (South Atlantic Council) proposed boundary between the Florida Keys/East Florida and West Florida stocks, set the status determination criteria (SDC) and annual catch limits (ACLs) for the West Florida stock, increase the minimum size limit

for the West Florida stock, and remove the powerhead exception for harvest of hogfish in the Gulf reef fish stressed area. The purpose of Amendment 43 is to establish management measures for the West Florida hogfish stock in the Gulf using the best scientific information available.

**DATES:** Written comments must be received by [*INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

**ADDRESSES:** You may submit comments on Amendment 43 identified by "NOAA-NMFS-2016-0126" by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0126](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0126), click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit all written comments to Peter Hood, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal

identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic copies of Amendment 43, which includes an environmental assessment, a fishery impact statement, a Regulatory Flexibility Act analysis, and a regulatory impact review, may be obtained from *www.regulations.gov* or the Southeast Regional Office Web site at *[http://sero.nmfs.noaa.gov/sustainable\\_fisheries/gulf\\_fisheries/reef\\_fish/2016/am43/index.html](http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/reef_fish/2016/am43/index.html)*.

**FOR FURTHER INFORMATION CONTACT:** Peter Hood, NMFS Southeast Regional Office, telephone: 727-824-5305, email: *[peter.hood@noaa.gov](mailto:peter.hood@noaa.gov)*.

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any FMP or amendment to NMFS for review and approval, partial approval, or disapproval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or amendment, publish an announcement in the **Federal Register**

notifying the public that the FMP or amendment is available for review and comment.

The FMP being revised by Amendment 43 was prepared by the Gulf Council and, if approved, would be implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

### **Background**

Currently, hogfish in the Gulf exclusive economic zone (EEZ) are managed as a single stock with a stock ACL and no allocation between the commercial and recreational sectors. Although hogfish occur throughout the Gulf, they are caught primarily off the Florida west coast. Generally, the fishing season for both sectors is open year-round, January 1 through December 31. However, accountability measures (AMs) for hogfish specify that if commercial and recreational landings exceed the stock ACL in a fishing year, then during the following fishing year if the stock ACL is reached or is projected to be reached, the commercial and recreational sectors will be closed for the remainder of the fishing year. The hogfish ACL and AMs were implemented in 2012 (76 FR 82044, December 29, 2011). The AMs were triggered when the hogfish ACL was exceeded in 2012, and the 2013 season was closed on December 2 because NMFS determined that the 2013 hogfish stock ACL had been

harvested (78 FR 72583, December 3, 2013). The stock ACL was exceeded again in 2013. However, there was no closure in 2014, and the stock ACL was not exceeded in the 2014 or 2015 fishing years.

In 2014, the Florida Fish and Wildlife Conservation Commission (FWC) completed the most recent stock assessment for hogfish through the Southeast Data, Assessment, and Review process (SEDAR 37). SEDAR 37 divided the hogfish stock into three stocks based upon genetic analysis as follows: the West Florida stock, Florida Keys/East Florida stock, and the Georgia through North Carolina stock. The West Florida stock is completely within the jurisdiction of the Gulf Council and the Georgia through North Carolina stock is completely within the jurisdiction of the South Atlantic Council. The Florida Keys/East Florida stock crosses the Councils' jurisdictional boundary, with a small portion of the stock extending into the Gulf Council's jurisdiction off the west coast of Florida. Based on SEDAR 37 and the Gulf and South Atlantic Councils' Scientific and Statistical Committee (SSC) recommendations, NMFS determined the West Florida stock is not overfished or undergoing overfishing, the Florida Keys/East Florida stock is overfished and undergoing overfishing, and the status of the Georgia-North Carolina stock status is unknown.

### **Actions Contained in Amendment 43**

Amendment 43 includes actions to revise the FMU for hogfish to be the West Florida stock and define the geographic range of this stock consistent with the South Atlantic Council's proposed boundary between the Florida Keys/East Florida and West Florida stocks, and set the SDC and ACL for the West Florida stock. In addition, actions in Amendment 43 increase the minimum size limit for the West Florida stock, and remove the powerhead exception for harvest of hogfish in the Gulf reef fish stressed area.

#### *Fishery Management Unit*

The South Atlantic Council developed and submitted for review by the Secretary of Commerce a rebuilding plan for the Florida Keys/East Florida hogfish stock through Amendment 37 to the FMP for the Snapper-Grouper Fishery of the South Atlantic Region. Because SEDAR 37 indicated only a small portion of the Florida Keys/East Florida stock extends into the Gulf Council's jurisdiction off south Florida, the Gulf Council through Amendment 43 proposes to revise the hogfish FMU to be the West Florida stock and define the geographic range of this stock consistent with the South Atlantic Council's proposed boundary between the Florida Keys/East Florida and West Florida hogfish stocks near Cape Sable, Florida. This boundary would be a line

extending west along 25°09' N. lat. to the outer boundary of the EEZ. The Gulf Council would manage hogfish (the West Florida stock) in the Gulf EEZ except south of 25°09' N. lat. off the west coast of Florida. The South Atlantic Council would manage hogfish (the Florida Keys/East Florida stock) in the Gulf EEZ south of 25°09' N. lat. off the west coast of Florida, and in the South Atlantic EEZ to the state border of Florida and Georgia. The boundary line near Cape Sable is south of the line used in SEDAR 37, which defined the West Florida stock as north of the Monroe and Collier County, Florida, boundary line. Therefore, it is possible that some fish from the Florida Keys/East Florida stock will be harvested under the regulations by the Gulf Council. However, the majority of hogfish landings in Monroe County occur in the Florida Keys, and the proposed boundary is far enough north of the Florida Keys that fishing trips originating in the Florida Keys rarely travel north of the boundary, and far enough south of Naples and Marco Island, Florida, that fishing trips originating from these locations rarely travel south of the boundary. In addition, the boundary line proposed by the Gulf and South Atlantic Councils is currently used by the FWC as a regulatory boundary for certain state-managed species. Using a pre-existing management boundary will increase enforceability

and help fishermen by simplifying regulations across adjacent management jurisdictions.

In accordance with section 304(f) of the Magnuson-Stevens Act, the Gulf Council requested that the Secretary designate the South Atlantic Council as the responsible Council for management of the Florida Keys/East Florida hogfish stock in Gulf Federal waters south of 25°09' N. lat. near Cape Sable on the west coast of Florida. If the Gulf Council's request is approved, the Gulf Council would continue to manage hogfish in Federal waters in the Gulf, except in Federal waters south of this boundary. Therefore, the South Atlantic Council, and not the Gulf Council, would establish the management measures for the entire range of the Florida Keys/East Florida hogfish stock, including in Federal waters south of 25°09' N. lat. near Cape Sable in the Gulf. Commercial and recreational for-hire vessels fishing for hogfish in Gulf Federal waters, *i.e.*, north and west of the jurisdictional boundary between the Gulf and South Atlantic Councils (approximately the Florida Keys), as defined at 50 CFR 600.105(c), would still be required to have the appropriate Federal Gulf reef fish permits, and vessels fishing for hogfish in South Atlantic Federal waters, *i.e.*, south and east of the jurisdictional boundary, would still be required to have the appropriate



Federal South Atlantic snapper-grouper permits. Those permit holders would still be required to follow the sale and reporting requirements associated with the respective permits.

NMFS specifically seeks public comment regarding the revised stock boundaries and the manner in which the Councils would have jurisdiction over these stocks if both Amendment 37 for the South Atlantic and Amendment 43 for the Gulf of Mexico are approved and implemented.

#### *Status Determination Criteria*

Currently, the only SDC implemented for Gulf hogfish is the overfishing threshold, or maximum fishing mortality rate (MFMT). The overfished threshold, or minimum stock size threshold (MSST), and maximum sustainable yield (MSY) actions were disapproved when the Gulf Council's Sustainable Fisheries Act Generic Amendment was approved by NMFS on November 17, 1999. Amendment 43 would maintain the current MFMT value at the fishing mortality corresponding to 30 percent of the stock's spawning potential ratio (SPR) ( $F_{30\%SPR}$ ). Amendment 43 would also specify the MSST and MSY values. The MSY proxy would equal the equilibrium yield at  $F_{30\%SPR}$  and the MSST value would be equal to 75 percent of the spawning stock biomass capable of producing an equilibrium yield of the MSY proxy.

### *Annual Catch Limit*

The current ACL and annual catch target (ACT) for Gulf hogfish were established based on 1999 through 2008 landings. The ACL and ACT were set using the Gulf Council's acceptable biological catch (ABC) control rule for stocks that have not been assessed but are stable over time.

Amendment 43 would set the ACL for the West Florida hogfish stock at 219,000 lb (99,337 kg), round weight, for the 2017 and 2018 fishing years based on recommendations from the Gulf Council's SSC after its review of SEDAR 37. In 2019, and subsequent fishing years, the ACL would be set at the equilibrium ABC of 159,300 lb (72,257 kg), round weight. The Gulf Council decided to discontinue the designation of an ACT, because it is not used in the current AMs or for other management purposes.

### *Minimum Size Limit*

Although the West Florida hogfish stock is not overfished or undergoing overfishing, the stock could be subject to seasonal closures should landings exceed the stock ACL and AMs are triggered. In 2012 and 2013, the stock ACL was exceeded, thus causing landings to be closely monitored in 2013 and 2014. This resulted in an in-season closure in 2013 but not in 2014. To reduce the likelihood of AMs being triggered, the Gulf Council determined that

increasing the minimum size limit in Federal waters from 12 inches (30.5 cm), fork length (FL), to 14 inches (35.6 cm), FL, could reduce the directed harvest rate and, consequently, reduce the probability of exceeding the stock ACL and triggering AMs. This action has an additional benefit of allowing the hogfish to grow larger and have an additional spawning opportunity before being susceptible to harvest.

#### *Powerhead Exemption*

Currently, as described at 50 CFR 622.35(a), a regulatory exemption allows for the harvest of hogfish using powerheads in the reef fish stressed area. Amendment 43 would remove this exemption. The powerhead exemption provision is a regulatory holdover from when hogfish were listed as a species in the fishery but not in the reef fish FMU. Harvesting species in the FMU with powerheads in the stressed area was prohibited. By removing the powerhead exemption for hogfish, hogfish would be subject to the same regulations for Gulf reef fish in the stressed area as other species in the reef fish FMU. The coordinates for the reef fish stressed area are provided in 50 CFR part 622, Table 2 in Appendix B.

#### **Proposed Rule for Amendment 43**

A proposed rule that would implement Amendment 43 has been drafted. In accordance with the Magnuson-Stevens Act, NMFS is evaluating Amendment 43 to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. If the determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

#### **Consideration of Public Comments**

The Gulf Council has submitted Amendment 43 for Secretarial review, approval, and implementation. Comments on Amendment 43 must be received by *[insert date 60 days after publication in the FEDERAL REGISTER]*. Comments received during the respective comment periods, whether specifically directed to Amendment 43 or the proposed rule, will be considered by NMFS in its decision to approve, partially approve, or disapprove Amendment 43. Comments received after the comment periods will not be considered

by NMFS in this decision. All comments received by NMFS on Amendment 43 or the proposed rule during their respective comment periods will be addressed in the final rule.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: October 31, 2016

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Emily H. Menashes,  
Acting Director,  
Office of Sustainable Fisheries,  
National Marine Fisheries Service.

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